

**United States Department of Labor
Employees' Compensation Appeals Board**

MARY E. D'ANGELO, Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, St. Louis, MO, Employer)

**Docket No. 03-1096
Issued: May 17, 2004**

Appearances:
Mary E. D'Angelo, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On March 24, 2003 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated January 21, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

ISSUE

The issue on appeal is whether appellant is entitled to greater than an 8 percent impairment of the left thumb and a 12 percent impairment of the right thumb, for which she has received a schedule award. She contends on appeal that the awards fail to include the damage her thumbs have had on her hand and arms.

FACTUAL HISTORY

On September 21, 1999 appellant, a 44-year-old registered nurse, filed a traumatic injury claim alleging that she injured her right calf, twisted her right shoulder and hit both her palms in the thumb area when she slipped and fell. The Office accepted the claim for left wrist contusion,

contusion left knee and strain of both thumbs. On February 11, 2000 the Office authorized surgery for ligamentous reconstruction of the metacarpal phalangeal joint of the right thumb and reconstruction of the adductor muscle. On February 16, 2000 the Office modified the surgical authorization to include ligamentous reconstruction of the metacarpal phalangeal joint bilaterally and reconstruction of the adductor muscle.¹ On April 2, 2002 appellant filed a claim for a schedule award.

In a report dated November 19, 2002, Dr. John A. Gragnani, a second opinion Board-certified physiatrist, reported physical findings, including no “sympathetic activity involving the upper extremities” and “[n]o sudomotor or vasomotor dysfunction or atrophy of the hand intrinsic (sic).” Grip strength was reported as 12 killogram (kg) at position 1, 13 kg at position 2, 14 kg at position 3, 8 kg at position 4 and 10 kg at position 5, for the right hand and 8 kg at position 1, 12 kg at position 2, 16 kg at position 3, 10 kg at position 4 and 10 kg at position 5, for the left hand. Dr. Gragnani utilized the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* and determined that appellant had a 0 percent impairment based on no loss of sensation pursuant to Table 16-5. Regarding an impairment rating for her thumbs, he concluded:

“For the left thumb [interphalangeal] joint, Figure 16-12, flexion of 55 degrees is approximately [1] percent. Extension of +10 degrees is [0] percent impairment. Therefore, [one] percent was generated for the [interphalangeal] joint. For the [metacarpophalangeal] joint, flexion of 60 degrees is [0] [percent] impairment. Extension of +20 degrees is [0] percent impairment. For radial abduction of 90 degrees, there is no impairment. For adduction of [four] [centimeters] measured lack of movement, impairment is [four] percent. For left thumb opposition movement of [6] [centimeters] from Table 16-9, impairment is [3] percent. Therefore, the total values for the left thumb added to yield [8] percent. From Table 16-1, [8] percent impairment for the left thumb is equivalent to [3] percent impairment of the left hand. From Table 16-2, [3] percent impairment of the left hand is equivalent to [3] percent impairment of the left upper extremity. Therefore, the total left upper extremity impairment for the injury to the left thumb is [three] percent.”

“For the right thumb [interphalangeal] joint, from Figure 16-12, flexion of 50 degrees is equivalent to 2 percent impairment. Extension of 30 [degrees] is [0 percent] impairment. For the [metacarpophalangeal] joint from Figure 16-5, flexion of 60 degrees is 0 percent impairment. Adduction of [two] [centimeters] measured lack of motion is [one] percent impairment. For right thumb opposition movement of [4] [centimeters] from Table 16-9, impairment is [9] percent. Therefore, the total value for the right thumb is 12 percent. From Table 16-1, 12 percent impairment of the right thumb is equivalent to [5] percent of the right hand. From Table 16-2, [5] percent impairment of the right hand is equivalent to 5 percent impairment of the right upper extremity. Therefore, the total right upper extremity impairment for the injury to the right thumb is [five] percent.”

¹ The surgery was performed on February 28, 2000.

In a report dated November 28, 2002, an Office medical adviser reviewed the November 19, 2002 report and concluded that appellant was entitled to 8 percent impairment of the left thumb and a 12 percent impairment of the right thumb based upon the A.M.A., *Guides* (5th ed. 2000).²

On January 21, 2003 the Office issued appellant a schedule award for an 8 percent impairment of the left thumb and a 12 percent impairment of the right thumb.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner, in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides*⁵ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

ANALYSIS

On appeal appellant contends that the schedule award issued by the Office failed to take into consideration the impact of her thumb damage on her arm and hand and references the report by Dr. Gragnani in support of her argument.

In his November 19, 2002 report, based on objective test results, Dr. Gragnani concluded that appellant had an 8 percent impairment of the left thumb, which equaled a 3 percent impairment of the left upper extremity using Tables 16-1 and 16-2 and a total 12 percent impairment for the right thumb, which converted to a 5 percent impairment of the right upper extremity using Tables 16-1 and 16-2.⁶ An Office medical adviser reviewed Dr. Gragnani's report on November 28, 2002 and stated that appellant was entitled to an 8 percent impairment of the left thumb and a 12 percent impairment of the right thumb.

Regarding appellant's contention that the Office failed to consider an upper extremity impairment rating, the Board has held that where residuals of an injury to a member of the body specified in the schedule award provision of the Act extend into an adjoining area of a member

² *Ronald R. Kraynak*, 53 ECAB ____ (Docket No. 00-1541, issued October 2, 2001).

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

⁶ The Board notes that the conversion of the impairment rating for the thumb into the hand and the upper extremity are the same for an 8 and a 12 percent impairment. See A.M.A., *Guides* (5th ed. 2001) at 438, 439, Tables 16-1 and 16-2.

also enumerated in the schedule, such as an injury of the finger into the hand, of a hand into the arm or of a foot into the leg, the schedule award should be made on the basis of the percentage of loss of use of the larger member.⁷ A review of the medical evidence does not establish that the injury of appellant's right and left thumbs extended beyond either hand into either arm. Dr. Gragnani specifically opined that there was no "sympathetic activity involving the upper extremities" and there is no other medical evidence which supports a finding that appellant's right and left thumb impairments extended into her right and left upper extremities. Thus, the Office properly did not consider an upper impairment rating as the residuals of the injury did not extend into either arm.

However, the Board finds that the Office failed to consider whether appellant's right and left thumb impairments extended into the right and left hand. Grip strength and impairment of the metacarpophalangeal joint are used to determine whether an impairment of the thumb has extended into an impairment involving the hand. Based on Dr. Gragnani's results and upon the metacarpophalangeal joint findings for both thumbs, there would not be an impairment to either hand. However, he reported grip strength as 12 kg at position 1, 13 kg at position 2, 14 kg at position 3, 8 kg at position 4 and 10 kg at position 5, for the right hand and 8 kg at position 1, 12 kg at position 2, 16 kg at position 3, 10 kg at position 4 and 10 kg at position 5, for the left hand. Table 16-31 reports normal average grip strength in females in a skilled profession as 26.8 kg for the major hand and 24.4 kg for the minor hand. The average grip strength reported by Dr. Gragnani for appellant's right hand is 11.4⁸ kg and 11.2 kg for her left hand, both of which are less than the average grip strength noted for a female in a skilled profession for either a major or minor hand. The medical evidence, thus, establishes that the injury of the right and left thumb extended into the right and left hand, which would make appellant entitled to an award for impairment to both hands.

Section 8107(c)(6) of the Act provides that, for total or 100 percent loss of the thumb, an employee is entitled to 75 weeks of compensation⁹ and section 8107(c)(3) provides, that for total or 100 percent loss of the hand an employee is entitled to 244 weeks of compensation.¹⁰ The Office awarded appellant 15.00 weeks of compensation for her left and right thumb impairments. In reaching this determination the Office combined the 12 percent impairment for the right thumb and 8 percent impairment for the left thumb to result in a total impairment for both thumbs of 20 percent. However, as noted previously appellant's impairment extended into her hand and the calculations for her impairment should have been based upon the impairment to her hands. As the Office erred by failing to consider the schedule award in terms of an impairment to both hands, it erred in computing the number of weeks, to which she was entitled for the impairments to both her right and left hands. Pursuant to Table 16-1, an 8 percent impairment of a thumb converts to a 3 percent impairment of the hand and a 12 percent impairment of the thumb converts to a 5 percent impairment of the hand, which would result in a total impairment

⁷ *Walter R. Malena*, 46 ECAB 983 (1995).

⁸ The average grip strength was computed by adding the grip strengths reported for both thumb at the different positions and then averaging them.

⁹ 5 U.S.C. § 8107(c)(6).

¹⁰ 5 U.S.C. § 8107(c)(3).

for both hands of 8 percent. Section 8107(c)(3) provides that 244 weeks of compensation is to be paid for 100 percent loss of use of a hand. Eight percent of 244 weeks is 19.52 weeks, rather than the 15.00 weeks awarded.¹¹ The Board, therefore, concludes that appellant is entitled to additional compensation due to the difference between 19.52 weeks and 15.00 weeks based upon her right and left hand impairments.

CONCLUSION

The Board finds that appellant is entitled to a 3 percent impairment of the left hand and a 5 percent impairment of the right hand, which results in an award of 19.52 weeks rather than the 15 weeks the Office awarded her based upon her right and left thumb impairments. Thus, appellant is entitled to additional compensation due to the difference between 19.52 weeks and 15.00 weeks based upon her right and left hand impairments.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 21, 2003 is affirmed as modified to reflect that appellant has a 3 percent impairment of the left hand and a 5 permanent impairment of the right hand, which results in an award of 19.52 weeks. The case is remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: May 17, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹¹ 5 U.S.C. § 8107(c)(3).